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Joint Committee on Taxation
January 22, 1991
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TAX RELIEF FOR OPERATION DESERT SHIELD MILITARY PERSONNEL
(Scheduled for Markup Consideration by the Committee on Ways and Means on January 23, 1991)

Present Law

General time limits for filing tax returns

Present law provides that individuals generally must file their Federal income tax returns by April 15 of the year following the close of a taxable year (sec. 6072). Present law also provides that the Secretary may grant reasonable extensions of time for filing such returns (sec. 6081). Treasury regulations provide an additional automatic two-month extension (until June 15 for calendar-year individuals) for United States citizens and residents in military or naval service on duty outside the United States (Treas. Reg. sec. 1.6081-5(a)(6)). No action is necessary to be eligible for this extension. This extension applies to both filing returns and paying the tax due (interest, however, must be paid from April 15).

Treasury regulations also provide, upon application on the proper form, an automatic four-month extension (until August 15 for calendar-year individuals) for any individual properly filing that form and paying the amount of tax estimated to be due (Treas. Reg. sec. 1.6081-4).

In general, individuals must make quarterly estimated tax payments by April 15, June 15, September 15, and January 15 of the following taxable year. Wage withholding is considered to be a payment of estimated taxes.

Suspension of time periods

In general, present law suspends the period of time for performing various acts under the Internal Revenue Code, such as filing tax returns, paying taxes, or filing a claim for credit or refund of tax, for any individual serving in the Armed Forces of the United States in an area designated as a combat zone (sec. 7508). An individual who becomes a prisoner of war is considered to continue in active service, and is therefore also eligible for these suspension of time provisions. The suspension of time also applies to an individual serving in support of such Armed Forces, such as Red Cross personnel, accredited correspondents, and civilian personnel acting under the direction of the Armed Forces in support of those Forces. The designation of a combat zone

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must be made by the President in an Executive Order. The President must also designate the period of combatant activities in the combat zone (the starting date and the termination date of combat).

The suspension of time encompasses the period of service in the combat zone, as well as (1) any time in continuous hospitalization outside the United States resulting from injury received in the combat zone or (2) time in missing in action status, plus the next 180 days.

The suspension of time applies to the following acts:

(1) Filing any return of income, estate, or gift tax (except employment and withholding taxes);

(2) Payment of any income, estate, or gift tax (except employment and withholding taxes);

(3) Filing a petition with the Tax Court for redetermination of a deficiency, or for review of a decision rendered by the Tax Court;

(4) Allowance of a credit or refund of any tax;

(5) Filing a claim for credit or refund of any tax;

(6) Bringing suit upon any such claim for credit or refund;

(7) Assessment of any tax;

(8) Giving or making any notice or demand for the payment of any tax, or with respect to any liability to the United States in respect of any tax;

(9) Collection of the amount of any liability in respect of any tax; and

(10) Bringing suit by the United States in respect of any liability in respect of any tax.

Individuals may, if they choose, perform any of these acts during the period of suspension. The suspension period is also disregarded in calculating the amount of any credit or refund (including interest). Thus, no interest is paid on refunds made pursuant to this provision, and no interest is charged to the taxpayer on underpayments. Special rules apply if the collection of tax is in jeopardy.

Spouses of qualifying individuals are entitled to the same suspension of time, except that the spouse is ineligible for this suspension for any taxable year beginning more than two years after the date of termination of combatant

activities in the combat zone.

Exclusion for combat pay

Gross income does not include certain combat pay of members of the Armed Forces (sec. 112). If enlisted personnel serve in a combat zone during any part of any month, military pay for that month is excluded from gross income. In addition, if enlisted personnel are hospitalized as a result of injuries, wounds, or disease incurred in a combat zone, military pay for that month is also excluded from gross income; this exclusion is limited, however, to hospitalization during any part of any month beginning not more than two years after the end of combat in the zone. In the case of commissioned officers, these exclusions from income are limited to $500 per month of military pay.

Exemption from tax upon death

An individual in active service as a member of the Armed Forces who dies while serving in a combat zone (or as a result of wounds, disease, or injury received while serving in a combat zone) is not subject to income tax for the year of death (as well as any prior taxable year ending on or after the first day the individual served in the combat zone) (sec. 692). Similar rules apply to military or civilian employees of the United States whose death results from specified terroristic or military action.

Executive Order Designating Persian Gulf Area as Combat Zone

On January 21, 1991, President Bush signed Executive Order 12744, designating the Persian Gulf Area as a combat zone. This designation is retroactive to January 17, 1991, the date combat commenced in that area, and continues in effect until terminated by another Executive Order. Thus, individuals serving in the Persian Gulf Area are eligible for the suspension of time provisions and military pay exclusions described above, beginning on January 17, 1991.

The Executive Order specifies that the Persian Gulf Area is the Persian Gulf, the Red Sea, the Gulf of Oman, part of the Arabian Sea, the Gulf of Aden, and the entire land areas of Iraq, Kuwait, Saudi Arabia, Oman, Bahrain, Qatar, and the United Arab Emirates.

Description of Proposed Chairman's Mark

The proposed Chairman's mark (a modified version of H.R. 4, introduced by Chairman Rostenkowski on January 3, 1991) would amend section 7508 by providing that any individual who performs Desert Shield services (and the spouse of such an individual) is entitled to the benefits of the suspension of time provisions of section 7508. Thus,

personnel participating in Operation Desert Storm who are entitled to the benefits of these suspension of time provisions commencing January 17, 1991, pursuant to the Executive Order, would also be entitled to the benefits of these suspension of time provisions for the period from the commencement of their participation in Operation Desert Shield (which could be as early as August 2, 1990) to the effective date of the Executive Order.

Desert Shield services are defined as services in the Armed Forces of the United States (or in support of those Armed Forces) if such services are performed in the area designated by the President as the "Persian Gulf Desert Shield area" and such services are performed during the period beginning August 2, 1990, and ending on the date on which any portion of the area is designated by the President as a combat zone pursuant to section 112 (which is January 17, 1991).

The proposed Chairman's mark also would amend section 7508 by providing that the suspension of time provisions of section 7508 do not apply for purposes of determining the amount of interest on a tax refund. Thus, the rules generally applicable to other taxpayers would also apply to those eligible for the benefits of these suspension of time provisions. In general, these rules provide that the IRS is to pay interest on refunds issued more than 45 days after the return is filed. In addition, a special rule would apply in the case of returns claiming refunds filed during this suspension period. With respect to these qualifying returns, interest would be paid on tax refunds from April 15 (in the case of calendar-year individuals).

The proposed Chairman's mark would also amend section 7508 by extending the suspension provisions that apply during the period of continuous hospitalization outside the United States to continuous hospitalization inside the United States, with respect to the individual eligible for the benefits of these suspension of time provisions; with respect to spouses, the rules would be unchanged from present law. In no event would this new provision extend beyond five years from the date the individual returns to the United States.

Effective date.--The Chairman's mark would take effect on August 2, 1990.